2012 Il App (1st) 103122-U

FIRST DIVISION
FILED: JANUARY 17, 2012

No. 1-10-3122

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

OFFICER MARVIN BAILEY, Plaintiff-Appellant, v. THOMAS J. DART, Sheriff of Cook County; COOK COUNTY SHERIFF'S MERIT BOARD; JAMES P. NALLY, Board Chairman; MICHAEL D. CAREY, Vice Chairman; ROBERT F. HOGAN, Board Member; MARY NELL GREER, Board Member; DANIEL J. LYNCH, Board Member; BRIAN J. RIORDAN, Board Member; JOHN DALICANDRO, Board Member; ARTHUR R. WADDY, Secretary; and BYRON BRAZIER, Board Member, Defendants-Appellees.	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY No. 09 CH 09809 HONORABLE RICHARD J. BILLIK, JUDGE PRESIDING.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Karnezis and Rochford concurred in the judgment.

O R D E R

HELD: The decision of the Cook County Sheriff's Merit Board terminating the plaintiff's employment as a Cook County correctional officer is not obviously erroneous or against the manifest weight of the evidence, and the circuit court correctly confirmed the decision.

¶ 1 The plaintiff, Officer Marvin Bailey, appeals from an order of the Circuit Court of Cook County which confirmed a decision of the Cook County Sheriff's Merit Board (Board) terminating his employment as a Cook County correctional officer. The plaintiff argues that the Board's decision is against the manifest weight of the evidence and that the Board lacked cause to terminate his employment. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 2 The plaintiff was employed as a Cook County correctional officer and was a member of the Special Operations Response Team (SORT) at the Cook County Jail (jail). On February 11, 2006, the plaintiff was assigned to work the 10:00 p.m. to 6:00 a.m. shift in the SI-2 tier within Division 1 at the jail along with fellow SORT members, Darrin Gater and Richard Davis. The SI-2 tier houses high risk inmates, including those with a history of violence towards other inmates and those who had made previous escape attempts.

¶ 3 On February 11, 2006, the plaintiff was assigned to the command post, while Gater and Davis were assigned to work within the tier. The plaintiff arrived approximately 20 minutes late for his shift which was to have begun at 10:00 p.m., and he went directly to the command post. When he arrived for work, the plaintiff made no contact with Gater or Davis. Approximately 40 minutes after starting his shift, the plaintiff left his post, left the jail, and drove his car to a Walgreen's store located at 39th and Western in Chicago to purchase an energy drink.

¶ 4 At approximately 11:30 p.m., while the plaintiff was still absent from the jail premises, Davis decided to take his lunch break. He informed Gater he was taking his break, but did not attempt to notify the plaintiff to relieve him. Gater remained alone in the tier.

¶ 5 While Davis was gone from the tier and the plaintiff was still absent from the jail premises,

several inmates overpowered Gater. Six inmates from the SI-2 tier successfully escaped from the jail, passing through a door to the outside located within the command post.

¶ 6 Following the incident, the Sheriff of Cook County (Sheriff) filed complaints with the Board against both the plaintiff and Davis, alleging that they had violated his General Orders and the Rules and Regulations of the Board. The Sheriff sought the termination of both.

¶ 7 On October 6, 2008, the Board issued its decision in the proceeding against Davis (Dart v. Davis, Docket No. 1472). The Board found that there was no cause to terminate or discipline Davis and ordered him returned to duty as a correctional officer. Specifically, the Board found that Davis had not violated any of the Sheriff's General Orders or its Rules and Regulations because Davis had formally signed out for lunch when he left the SI-2 tier and because the Standard Operating Procedures of Division 1 which required two officers to man the tiers at all times did not apply to SORT officers.

¶ 8 On February 5, 2009, the Board issued its decision in the matter pending against the plaintiff. The Board found that, by not contacting his fellow officers or notifying anyone that he was taking a break and leaving the jail compound, the plaintiff's behavior contributed to the escape of six inmates and jeopardized the security of the jail along with the health, safety, and welfare of the detainees, other staff, and visitors. The Board concluded that in so doing the plaintiff had violated the Sheriff's General Orders as charged. The Board ordered the plaintiff "separated from his employment effective 7/31/07."

¶ 9 The Sheriff filed a timely action for administrative review of the Board's decision in the matter against Davis. *Dart v. Cook County Sheriff's Merit Board*, Case No. 08 CH 40075. The

plaintiff filed the instant action seeking administrative review of the Board's decision terminating his employment.

¶ 10 The circuit court confirmed both the Board's decision in the Davis case and the Board's decision to terminate the plaintiff's employment. The plaintiff timely filed the instant appeal from the circuit court's decision in his case.

¶ 11 The plaintiff argues both that the findings of the Board upon which its decision is based are against the manifest weight of the evidence; and, even if those findings are true, no cause exists for his discharge. However, before addressing the substantive issues raised by the plaintiff, we must first settle upon our standard of review.

¶ 12 In an appeal from a final administrative decision, the applicable standard of review depends upon whether the question presented is a question of fact, a question of law, or a mixed question of law and fact. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 204, 692 N.E.2d 295 (1998). Rulings on questions of fact will be reversed only if they are against the manifest weight of the evidence, while questions of law are reviewed *de novo*. *City of Belvidere*, 181 Ill. 2d at 204-05. Where, as here, the question presented involves a mixed question of law and fact, the clearly erroneous standard is applied. *Board of Trustees of University of Illinois v. Illinois Educational Labor Relations Board*, 224 Ill. 2d 88, 97, 862 N.E.2d 944 (2007) (citing *City of Belvidere*, 181 Ill. 2d at 205). The clearly erroneous standard accords substantial deference to the administrative decision, in acknowledgment of the agency's experience and expertise in resolving matters within its purview. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 394-95, 763 N.E.2d 272 (2001); *see also Central City Educational Ass'n, IEA/NEA*

v. Illinois Educational Labor Relations Board, 149 Ill. 2d 496, 523, 599 N.E.2d 892 (1992). An administrative decision "will be deemed to be 'clearly erroneous' only where the reviewing court is 'left with the definite and firm conviction that a mistake has been committed.' " *AFM Messenger Service, Inc.*, 198 Ill. 2d at 395 (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, (1948)); see also *Board of Trustees*, 224 Ill. 2d at 97-98.

¶ 13 In urging reversal of the judgment of the circuit court and the decision of the Board, the plaintiff contends that the Board's finding that the standard operating procedure (SOP) of Division 1 requiring two correctional officers to man SI-2 tier at all times did not apply to SORT officers such as himself. In support, he contends that, in concluding that the divisional SOP requiring two officers to man the SI-2 tier at all times, the Board ignored the testimony of several correctional officers who testified that Division 1 SOP's did not apply to SORT members, and the Board also ignored its own finding to that effect contained in *Dart v. Davis*. The record reveals, however, that Dennis Andrews, who on February 11, 2006, was the Assistant Director of External Operations at the jail and a supervisor of SORT officers, testified that, on the night of the escape, three officers were assigned to the 10 p.m. to 6 a.m. shift on the SI-2 Tier. Two of the officers were to be in the tier at all times, and the third officer was to provide for relief. Gayler Cobbs, the Assistant Director of Security for the jail's Department of Women's Justice Services and who had previously worked as a supervisor in Division 1, testified that, when SORT officers were assigned to man the S 1 or 2 tiers, two officers should be assigned to the tier at all times; the same SOP that would have been used if Division 1 officers were assigned. Although there is conflicting evidence in the record on the issue, it was the Board's function to decide questions of fact (*Board of Education, Granite City Community*

School District No. 9 v. Sered, 366 Ill. App. 3d 330, 335-36, 850 N.E.2d 821 (2006)), judge the credibility of witnesses (*Dotson v. Dowling*, 102 Ill. App. 3d 340, 342, 430 N.E.2d 44 (1981)), and resolve conflicting evidence (*Pryka v. Board of Police and Fire Commissioners of the Village of Schaumburg*, 67 Ill. App. 3d 210, 214, 384 N.E.2d 784 (1978)). The Board's determination on such matters will not be disturbed on review unless against the manifest weight of the evidence; that is to say, only when an opposite conclusion is clearly evident. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88, 606 N.E.2d 1111 (1992). When, as in this case, the record contains evidence to support the Board's finding on a factual issue, it is not against the manifest weight of the evidence. See *Abrahamson*, 153 Ill. 2d at 88. Consequently, in analyzing the issues presented by this appeal, we accept as true the Board's finding that, on the 10 p.m. to 6 a.m. shift on February 11, 2006, two correctional officers were supposed to be on duty in the SI-2 tier at all times.

¶ 14 Nevertheless, the plaintiff contends that the "Board's finding that *** [his] conduct of taking a lunch break off of the jail compound violated General Orders and the Merit Board Rules is contrary to the evidence." We disagree.

¶ 15 In its decision, the Board found that:

> "[The plaintiff's] negligent behavior in not contacting any fellow officers or signing out and notifying anyone that he was not only taking a break, but leaving the compound, was a contributing cause that led to the escape of six inmates. It is clear that these actions also jeopardize [*sic*] the security of the facility and/or the health, safety and welfare of the detainees, other staff and visitors. These actions also resulted in a reflection of discredit

> upon the Department of Corrections and the Sheriff's officers and thus was [*sic*] unbecoming of an employee of the Cook County Department of Corrections. *** [H]e should well know that leaving the compound completely, not telling the fellow officer who was down on the tier in among the inmates, that he was leaving is reckless and negligent behavior."

In arriving at these conclusions, the Board resolved mixed questions of law and fact. As such, the Board's determinations will not be set aside unless they are clearly erroneous, that is to say, unless we are left with the definite and firm conviction that a mistake has been made. *AFM Messenger Service, Inc.*, 198 Ill. 2d at 395.

¶ 16 It is uncontroverted that, on February 11, 2006, the night of the escape, three officers were assigned to the 10 p.m. to 6 a.m. shift on the SI-2 Tier. As we have earlier found, two of the officers were to be in the tier at all times, and the third officer was to provide for relief. When the plaintiff arrived for work, Gater and Davis, were already working in the tier. Consequently, the plaintiff was responsible for relief in the event that either Gater or Davis wished to leave the tier. According to Andrews, this arrangement was the result of an unwritten policy. The plaintiff testified that his assignment was to "attend the command post."

¶ 17 Approximately 40 minutes into his shift, the plaintiff left the Command Post in the SI-2 tier of the jail, went to his car, and drove to a Walgreen's store at 39th and Western Avenues to get an energy drink. He left the facility without notifying either of his fellow officers. In so doing, the plaintiff left the Command Post unattended, and he was no longer available to relieve either of the two officers working in the tier. Located within the Command Post are two doors leading outside of the jail.

¶ 18 After Davis left the tier without being relieved, Gater, who remained in the tier alone, was overpowered by several prisoners, six of whom escaped from the jail through a door to the outside located in the unattended Command Post.

¶ 19 The Board concluded that plaintiff's actions in leaving the jail compound without notifying anyone violated four of the Rules and Regulations of the Cook County Department of Corrections, namely: General Order 3.8, Section III A-4 (failing to comply with lawful departmental rules, written procedures, directives, bulletins and verbal orders issued by the proper authorities), General Order 3.8, Section III D-4 (jeopardizing the security of the facility or the health, safety and welfare of detainees, staff and visitors), General Order 4.1, Section III A-1 (negligence leading to an escape), and General Order 4.1, Section III A-17 (engaging in conduct unbecoming an employee of the Cook County Department of Corrections which tends to reflect discredit on the Department of Corrections or Sheriff's Office). The plaintiff asserts that his actions did not violate any General Orders because he "was allowed to go off the jail compound during his lunch break."

¶ 20 Aside from the fact that the plaintiff never testified that he was on his lunch break when he left the jail compound, by leaving, he was unavailable to relieve Davis when he left the tier with only Gater remaining, and he left the Command Post unattended, enabling escaping prisoners to exit the facility to the outside through a door located therein. Simply put, the facts of record, along with the reasonable inferences which can be drawn therefrom, support the Board's conclusion that the plaintiff violated General Orders 3.8, Section III A-4, 3.8, Section III D-4, and 4.1, Section III A-17. Therefore, the Board's decision in this regard is not clearly erroneous.

¶ 21 Finally, the plaintiff argues that, "even if the Merit Board's findings of fact are correct, ***

these facts, without more, do not warrant the ultimate sanction of dismissal." Again, we disagree.

¶ 22 A Cook County correctional officer may only be discharged for cause. *Malinowski v. Cook County Sheriff's Merit Board*, 395 Ill. App. 3d 317, 322, 917 N.E.2d 148 (2009). Cause is defined as "some substantial shortcoming which renders continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and sound public opinion recognize as a good cause for his no longer occupying the place." *Fantozzi v. Board of Fire & Police Commissioners*, 27 Ill. 2d 357, 360, 189 N.E.2d 275 (1963). We will reverse the Board's decision to discharge the plaintiff only if it was arbitrary and unreasonable or was unrelated to the requirements of his office. *Ehlers v. Jackson County Sheriff's Merit Comm'n*, 183 Ill. 2d 83, 89, 697 N.E.2d 717 (1998).

¶ 23 Our view of the record leads us to conclude that the act of a correctional officer leaving the jail without notifying anyone and abandoning his post thereby facilitating the escape of six prisoners from the jail might reasonably be found to constitute a substantial shortcoming, rendering the officer's continued employment detrimental to the discipline and efficiency of the Department of Corrections and something which constitutes good cause for his discharge. We find, therefore, that the Board's decision to discharge the plaintiff in this case was neither arbitrary nor unreasonable and was clearly related to discharge of the duties of the plaintiff's office.

¶ 24 For these reasons, we affirm the judgment of the circuit court which confirmed the decision of the Board to discharge the plaintiff from his employment.

¶ 25 Affirmed.